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6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

8 **No. 2:10-cv-02741-JHN-PJWx**

9 RICHARD WOOL and ALLAN
10 MAYER, on behalf of the Sitrick and
11 Company Employee Stock Ownership
Plan,

FINAL ORDER AND JUDGMENT

12 Plaintiffs,

**BEFORE THE HON. JACQUELINE H.
NGUYEN**

13 v.

14
15 MICHAEL S. SITRICK and NANCY
16 SITRICK, husband and wife; THE
17 MICHAEL AND NANCY SITRICK
18 TRUST, a trust; RELIANCE TRUST
COMPANY, a Georgia corporation;

19 Defendants,

20 SITRICK AND COMPANY, INC., a
21 California corporation; SITRICK AND
22 COMPANY EMPLOYEE STOCK
OWNERSHIP PLAN;

23 Nominal Defendants.
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1 This Order concerns the proposed settlement (“Settlement”) of this litigation
 2 (the “Action”) involving claims for alleged violations of the Employee Retirement
 3 Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq. (“ERISA”) with respect to the Sitrick and Company Employee Stock Ownership Plan (the
 4 “ESOP”). On February 13, 2012, the Court entered an Order (ECF No. 138)
 5 indicating its “approval of the settlement; form to be determined” (“Preliminary
 6 Approval Order”).¹ The Court has received declarations attesting to the mailing of
 7 the Notice and publication of the Notice in accordance with the Settlement.
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9 A hearing was held on April 23, 2012 (the “Final Approval Hearing”) to
 10 determine whether to: (i) grant the Final Approval Motion; (ii) approve the form
 11 and method of Notice; (iii) approve the proposed Plan of Allocation of the
 12 Settlement Fund; (iv) grant Plaintiffs’ Counsel’s Fees and Expenses Motion; and
 13 (v) rule upon such other matters as the Court might deem appropriate.

14 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS
 15 FOLLOWS:

16 1. The Court has jurisdiction over the subject matter of this Action and
 17 all parties thereto pursuant to 29 U.S.C. § 1132(e).

18 2. Notice of the Settlement was provided to Affected Participants as
 19 directed by the Court’s February 13, 2012 Order. The Notice constituted due,
 20 adequate, and sufficient notice of the Settlement to all persons entitled to notice,
 21 and met all applicable requirements under the Federal Rules of Civil Procedure and
 22 any other applicable law.
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 25 ¹ Unless otherwise defined herein, the capitalized terms defined in the Settlement
 26 Agreement submitted to the Court on December 27, 2011 (ECF No. 133,
 27 Amended Exhibit A) (the “Settlement Agreement”) shall have the same meaning
 28 in this Order.

1 3. The Settlement was negotiated at arm's-length by experienced counsel
2 who were fully informed of the facts and circumstances of the action and of the
3 strengths and weaknesses of their respective positions, and with the assistance of
4 an experienced mediator.

5 4. The proposed Settlement warrants final approval because it is fair,
6 adequate, and reasonable to the Parties, the ESOP, and the Affected Participants,
7 and based upon (1) the strength of Plaintiffs' case; (2) the risk, complexity, and
8 likely duration of further litigation; (3) the risk (or lack thereof) of maintaining
9 class action status throughout the trial; (4) the amount offered in the Settlement; (5)
10 the stage of the proceedings and the amount of discovery completed; (6) the
11 experience and view of counsel; (7) the reaction of the ESOP's participants to the
12 Settlement; (8) the risks of establishing liability; (9) the risks of establishing
13 damages; (10) the range of reasonableness of the Settlement Amount in light of the
14 best possible recovery and the risk of no recovery; and (11) the range of
15 reasonableness of the Settlement Amount to a possible recovery in light of all the
16 attendant risks of litigation.

17 5. The Final Approval Motion is GRANTED, and the Settlement is
18 hereby APPROVED as fair, adequate and reasonable to the Parties, the ESOP, the
19 Affected Participants, and in the public interest. The settling parties are directed to
20 consummate the Settlement in accordance with the terms of the Settlement
21 Agreement.

22 6. The form and method of Notice is hereby APPROVED.

23 7. The Plan of Allocation is hereby APPROVED. The Settlement
24 Fund Administrator shall, in accordance with the provisions of the Settlement
25 Agreement, disburse the Settlement Funds to the Sitrick and Company 401(k) Plan
26 as successor to the ESOP in accordance with the Plan of Allocation, subject to any
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1 amounts withheld by the Settlement Fund Administrator for the payment of taxes,
2 statutory penalties, expenses and other sums as authorized in the Settlement
3 Agreement, and attorneys' fees and expenses as authorized by this Order. The
4 Court finds that the payments and distributions required to be made under the Plan
5 of Allocation are in settlement of disputed claims for damages in the Action; that
6 such disputed claims seek to recover losses claimed by the ESOP as a result of the
7 conduct alleged in the Action; and that the Plan of Allocation provides for similar
8 treatment of similarly situated participants in the ESOP. The Court accordingly
9 finds that the payments and distributions to be made under the Plan of Allocation
10 represent "restorative payments" for purposes of IRS Revenue Ruling 2002-45.
11 Any modification or change in the Plan of Allocation that may hereafter be
12 approved shall in no way disturb or affect this Judgment and shall be considered
13 separate from this Judgment.

14 8. Plaintiffs' Counsel are hereby awarded **attorneys' fees of \$1,562,500**
15 and **expenses of \$93,744.24**. Such award shall be payable from the Settlement
16 Fund in accordance with the terms of the Settlement Agreement. Consistent with
17 the Settlement Agreement, the Court finds that the sum of the attorneys' fee and
18 expenses requested by Plaintiffs' Counsel do not exceed 30% of the Settlement
19 Fund.

20 9. The Court retains jurisdiction over the Action, the Parties, the ESOP
21 and the Affected Participants for all matters relating to the implementation,
22 interpretation, and enforcement of the Settlement Agreement, this Order and Final
23 Judgment, and any application for fees and expenses incurred in connection with
24 future actions necessary to fully consummate the Settlement and distribute the
25 proceeds thereof.
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1 10. Without further order of the Court, the Parties may agree in writing to
2 reasonable extensions of time to carry out any of the provisions of the Settlement
3 Agreement.

4 11. The following claims are or shall be released, as set forth in Section
5 3, Paragraphs 3.1 to 3.5 of the Settlement Agreement:

6 A. By operation of this Judgment, the Sitrick and Company 401(k)
7 Plan, on its own behalf as the ESOP's successor-in-interest and on behalf of
8 the ESOP and the Affected Participants, shall absolutely and unconditionally
9 release and forever discharge each of the Released Parties from all Released
10 Claims. By operation of this Judgment, the Sitrick and Company 401(k)
11 Plan and its representatives, agents, attorneys, fiduciaries, administrators,
12 trustees, participants, beneficiaries, predecessors, successors-in-interest, and
13 assigns, including the ESOP and the Affected Participants, shall be bound by
14 the Settlement Agreement and shall be precluded from pursuing any other
15 claims, actions, demands, rights, liabilities, suits, or causes of action, in any
16 judicial or administrative forum of any kind, against the Released Parties
17 with respect to the Released Claims;

18 B. Upon the Effective Date, Plaintiffs, on behalf of themselves and
19 their current and former spouses, personal representatives, heirs, executors,
20 administrators, trustees, successors-in-interest, and assigns, shall absolutely,
21 unconditionally, irrevocably, and conclusively release and forever discharge
22 each of the Released Parties from all Released Claims. Upon the Effective
23 Date, Plaintiffs and their current and former spouses, personal
24 representatives, heirs, executors, administrators, trustees, successors-in-
25 interest, and assigns shall be bound by the Settlement Agreement and shall
26 be precluded from pursuing any other claims, counterclaims, actions,
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1 demands, rights, liabilities, suits, or causes of action, in any judicial or
2 administrative forum, against the Released Parties with respect to the
3 Released Claims;

4 C. Upon the Effective Date, all Defendants, on behalf of
5 themselves and their respective predecessors and successors-in-interest, shall
6 absolutely, unconditionally, irrevocably, and conclusively release and
7 forever discharge each Plaintiff and all Plaintiffs' Counsel with respect
8 specifically and exclusively to any claim or cause of action that may arise
9 from the institution or prosecution of the Action;

10 D. By operation of this Judgment, Plaintiffs, Defendants, and the
11 Sitrick and Company 401(k) Plan on behalf of itself, the ESOP, and the
12 Affected Participants, shall be deemed to have waived any and all rights and
13 benefits respectively conferred upon them by the provisions of Section 1542
14 of the California Civil Code and all similar provisions of the statutory or
15 common laws of any other state, territory, or other jurisdiction. Section
16 1542 reads in pertinent part: "A general release does not extend to claims
17 which the creditor does not know or suspect to exist in his or her favor at the
18 time of executing the release, which if known by him or her must have
19 materially affected his or her settlement with the debtor." By operation of
20 this Judgment, Plaintiffs, Defendants, and the Sitrick and Company 401(k)
21 Plan on behalf of itself, the ESOP and the Affected Participants shall be
22 deemed to have acknowledged that the foregoing waiver of the provisions of
23 Section 1542 of the California Civil Code and all similar provisions of the
24 statutory or common law of any other state, territory, or other jurisdiction is
25 a material term of the Settlement Agreement that was bargained for and
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1 without which the Parties would not have entered into the Settlement
2 Agreement.

3 12. The following covenants not to sue, as set forth in Section 4,
4 Paragraphs 4.1 to 4.3 of the Settlement Agreement, are hereby incorporated in this
5 Judgment:

6 A. By operation of this Judgment, the Sitrick and Company 401(k)
7 Plan, on its own behalf, on behalf of the ESOP as the ESOP's successor-in-
8 interest, and on behalf of the Affected Participants shall be deemed to have
9 covenanted and agreed: (i) not to file or otherwise assert against any
10 Released Party any claim, counterclaim, action, demand, suit, or cause of
11 action based on, arising from, or reasonably relating to any Released Claim;
12 and (ii) that the foregoing covenants and agreements shall be a complete
13 defense to any such claim, counterclaim, action, demand, suit, or cause of
14 action brought by the Sitrick and Company 401(k) Plan (whether on its own
15 behalf or on behalf of the ESOP) or any Affected Participant against any
16 Released Party.

17 B. As of the Effective Date, each Plaintiff shall be deemed to have
18 covenanted and agreed: (i) not to directly or indirectly file or otherwise
19 assert against any Released Party any claim, counterclaim, action, demand,
20 suit, or cause of action based on, arising from, or reasonably relating to any
21 Released Claim; and (ii) that the foregoing covenants and agreements shall
22 be a complete defense to any such claim, counterclaim, action, demand, suit,
23 or cause of action filed or otherwise asserted, directly or indirectly, by any
24 Plaintiff against any Released Party.

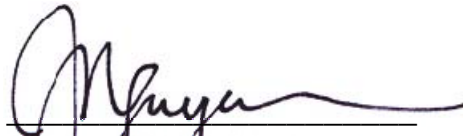
25 C. As of the Effective Date, each Defendant shall be deemed to
26 have covenanted and agreed: (i) not to file or otherwise assert against any
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1 Plaintiff or Plaintiffs' Counsel any claim, counterclaim, action, demand, suit,
2 or cause of action pertaining to or specifically and expressly arising from
3 any claim released pursuant to Paragraph 3.3 of the Settlement Agreement;
4 and (ii) that the foregoing covenants and agreements shall be a complete
5 defense to any such claim, counterclaim, action, demand, suit, or cause of
6 action brought by any Defendant against any Plaintiff or Plaintiffs' Counsel.

7 13. All claims asserted in the Action are DISMISSED WITH
8 PREJUDICE, without further order of the Court, pursuant to the terms of the
9 Settlement Agreement.

10 14. In the event that the Settlement is terminated in accordance with the
11 terms of the Settlement Agreement, this Judgment shall be null and void and shall
12 be vacated nunc pro tunc, and Paragraph 9 of the Settlement Agreement shall
13 govern the rights of the Parties thereto.

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15 SO ORDERED this 26th day of April, 2012.

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18 Hon. Jacqueline H. Nguyen
19 United States District Judge
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